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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/590,410

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Shlomo Nevo

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EXAMINER

GERRITY, STEPHEN FRANCIS

ART UNIT

PAPER NUMBER

3721

MAIL DATE

DELIVERY MODE

11/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/590,410	<b>Applicant(s)</b> NEVO ET AL.	
	<b>Examiner</b> Stephen F. Gerrity	<b>Art Unit</b> 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 23 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 August 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/23/06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### **Response to Preliminary Amendment**

1. Receipt is acknowledged of a preliminary amendment, filed 23 August 2006, which has been placed of record and entered in the file.

### **Priority**

2. Acknowledgment is made of applicant's claim for priority under 35 U.S.C. § 119. The certified copy has been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

### **Information Disclosure Statement**

3. Receipt is acknowledged of an Information Disclosure Statement, filed 23 August 2006, which has been placed of record in the file. An initialed, signed and dated copy of the PTO-1449 form is attached to this Office action.

### **Drawings**

4. The drawings are objected to because:
- the lines and numbers are rough and blurry -- the drawings are clearly of an informal quality;
  - they fail to comply with 37 CFR 1.84(p)(4) because reference character "8" is used twice in figure 6 to designate different elements;
  - they fail to comply with 37 CFR 1.84(p)(4) because reference character "7" is used in figure 1 to designate the air inlet pipe and in figure 9 to designate the material;

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- they fail to comply with 37 CFR 1.84(p)(5) because they do not include the following reference signs mentioned in the description: 6 (see page 12 - female snap), and 10 (see page 12 - connector point); and
- they fail to comply with 37 CFR 1.84(p)(5) because they include the following reference character not mentioned in the description: 33 - see fig. 10.
- Applicant is required to review and revise all of the drawings to ensure that the reference characters used in figures and the written description are consistent and correctly designate the invention elements.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### **Specification**

5. The abstract of the disclosure is objected to because of the use of legal phraseology (means), and because the language of the abstract is replete with grammatical and idiomatic errors. Correction is required. See MPEP § 608.01(b).

6. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

7. The disclosure is objected to because at page 14, line 8, "floor 30" should perhaps be changed to --floor 33--.

8. The disclosure is objected to because it is written in poor English and is replete with grammatical and idiomatic errors too numerous to mention specifically. The specification has not been checked to the extent necessary to determine the presence of all possible errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification. It is pointed out that 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The present specification is replete with terms which are not clear,

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concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph.

Accordingly, a substitute specification in proper idiomatic English and in compliance with 37 CFR 1.52(a) and (b) is required. The substitute specification filed must be accompanied by a statement that it contains no new matter.

**Claim Rejections - 35 USC § 101 and 112, 2<sup>nd</sup> paragraph**

**9.** 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

35 U.S.C. 112, 2<sup>nd</sup> paragraph reads as follows:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**10.** Claims 11-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 11-20 are rejected under 35 U.S.C. 101 because the subject matter is directed to neither a “machine” nor a “process”. Claim 11 recites “A method ... the apparatus as described in claim 1” in lines 1 and 2, this recitation embraces or overlaps two different statutory classes of invention, namely a “machine” and “process”, and thus fails to conform with 35 U.S.C. 101 which is drafted so as to set forth the statutory classes of invention in the alternative only.

Additionally, claims 11-20 are rejected under 35 USC. 112, 2<sup>nd</sup> paragraph as indefinite because claim 11 recites “A method ... the apparatus as described in claim 1”

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which makes claims 11-20 ambiguous. Ex parte Lyell, 17 USPQ2d 1548 (BPAI 1990).

See MPEP § 2173.05(p)(II).

### **Claim Rejections - 35 USC § 112**

**11.** The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

**12.** Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Claim 1, line 3, the recitation "suitable structure" renders the claim vague and indefinite because the term "suitable" is an ambiguous relative term.

Claim 2, line 3, the recitation "a bag" is vague and indefinite because it is unclear if the bag is a part of the machine or is formed by the machine.

Claim 2, lines 2 and 3, it is unclear what structural relationship or meaning is meant by the language "a separator and filling means for the filler of a bag".

Claim 3, lines 2 and 3, "the specific socket/structure in the packaging machine" lacks proper antecedent basis.

Claim 4 is indefinite because it depends from itself -- perhaps the claim should depend from claim 3 instead.

Claim 6, line 3, "the connection area" lacks proper antecedent basis.

Claim 6, line 3, the expression “suitably having” renders the claim vague and indefinite as the expression is relative and ambiguous.

Claim 7, lines 5 and 6, the language “being later to be connected” renders the claim vague and indefinite as the language is awkward and confusing.

Claim 7, line 6, it is unclear from the claim if the “snap-on structure” is part of the pipe or some other structural element.

Claim 9, lines 2 and 3, the language “is in which the portion ... an extended projection” is confusing and renders the claim vague and indefinite.

Claim 9, lines 3 and 4, the language “having any suitable form and length” renders the claim vague and indefinite because the language is relative and ambiguous.

Claim 10, line 2, the use of the term “suitable” renders the claim vague and indefinite.

Claim 10, lines 3 and 4, the phrase “such as” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 11, line 3, the use of the pronoun “it” renders the claim vague and indefinite because it is unclear from the claim language as to what “it” particularly refers.

Claim 11, line 6, it is unclear as to what applicant means by “a recess” and it is unclear precisely what structural element possesses “a recess” thereby rendering the claim ambiguous, vague and indefinite.

Claim 12 is vague and indefinite because it is unclear and confusing how “welds” would in any way be able to thread and insert the “apparatus” into the material.



Claim 13 is vague and indefinite because it is unclear and confusing how "welds" and "disabling movement ..." would in any way be able to thread and insert the "apparatus" into the material.

Claim 14 is vague and indefinite because it is unclear and confusing how "welds" and "disabling movement ..." would in any way be able to thread and insert the "apparatus" into the material.

Claim 15, lines 2 and 3, "a 2-ply material or a c-fold material" renders the claim vague and indefinite because the claim(s) fail to adequately establish that the material is a 2-ply material or a c-fold material.

Claim 15, line 3, it is unclear precisely what is meant by the language "the material's ends" because the language lacks proper antecedent basis and a reference point basis.

Claim 15, line 4, it is unclear if the "air inlet pipe" is one and the same as the air inlet pipe recited in line 2 of the claim because the language of the claim is awkward and ambiguous.

Claim 15, line 4, it is unclear what is meant by "its recess" because it is unclear from the claim precisely which element has a recess.

Claim 16, line 2, "the material edges" lacks proper antecedent basis and a proper reference basis point.

Claim 16, line 3, it is unclear from the claim as to what is meant by "each part's body and recess" thereby rendering the claim vague and indefinite.

Claim 16, lines 4 and 5, the language of the claim is vague and indefinite because it is unclear precisely what applicant is trying to claim.

Claims 15-19 are each vague and indefinite because it is unclear what applicant is trying to claim. These claims make little sense as to how the threading is accomplished relative to the structural elements previously recited in the method claims because no air-inlet pipe is discussed earlier in the method claim 11 from which each of these claims depends. Revision of and clarification of the steps to be performed in these claims is required.

Claim 21, line 3, the use of the pronoun "it" renders the claim vague and indefinite because it is unclear from the claim language as to what "it" particularly refers.

Claim 21, line 5, the language "in an easy access area" renders the claim vague and indefinite because the language is relative and ambiguous.

Claim 22 is vague and indefinite because the claim fails to recite any relationship between the sensor device and other elements of the claimed apparatus. It is unclear from the claim precisely what is being sensed.

These and any other informalities should be corrected so that the claims may particularly point out and distinctly claim the subject matter which applicant regards as the invention, as required by 35 U.S.C. § 112, second paragraph.

### **Claim Rejections - 35 USC § 102**

**13.** The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**14.** Claim 1 is rejected under 35 U.S.C. 102(b) as being clearly anticipated by Morris (US 5,162,069).

**15.** Claims 1-5, 8, 9 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Rausing et al. (US 3,086,336).

The Rausing reference discloses a replaceable apparatus 29 such as in figures 1, 2 and 6 carrying a pre-threaded material 2 towards the packaging machine 3, 6, 7, the apparatus 29 is connected to the packaging machine 3, 6, 7 by a suitable structure, there is an air-inlet pipe 106 (air can pass through the pipe) having a quick release enabling unit 166 comprising a quick release ring unit (166 is ring shaped), and the packaging machine includes a socket 168, 169. The air-inlet pipe 106 is disposable (as is anything). The apparatus 29 includes a filler appliance 164 which is a guide for the material 2. The packaging machine includes a separator 3 and filling means 14. The air inlet pipe 106 includes the pipe itself and a connector 166. The air inlet pipe has an extended projection 164 of suitable form and length which serves as a guide for the material 2 to reach the packaging machine 3, 6, 7. There is a tunnel 36 which is located in a easy access area (note glove box 40, 41).

**16.** Claims 1, 2, 11-14 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Castellon et al. (FR 2,697,799).

The Castellon et al. reference discloses an apparatus 4 for pre-threaded material 2 as seen in fig. 3 which is connected to the packaging machine as seen in fig. 1 by suitable structure. The apparatus includes a filler appliance 25 acting as a guide for the

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material 2, a separator and filling means for the filler 10 of the bag. The material 2 is wrapped around the apparatus 4 as seen in fig. 4 except where the apparatus is connected to the machine as seen in figs. 8-15. There is a weld at the front of the material 23, and the material is disabled from initial movement in three different directions (x-y-z coordinates) until the packaging machine is turned on and operated. The material is a thermoplastic roll of material.

**17.** Claims 1-6, 11, 20 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Fuss et al. (US 5,899,049).

The Fuss et al. reference discloses an apparatus 24 for pre-threaded material 23 which apparatus includes an air-inlet pipe 24 (air may pass through the pipe) and which is connected using a quick-connect coupling in ring form which includes a slot 31 for connecting to the projection 29 on the packaging machine 12. The pipe 24 is clearly disposable (as is any thing). The material 23 is wrapped all around the apparatus 24 as seen in fig. 3 except where the apparatus 24 connects to the machine 12. The material is fan-folded as seen in fig. 1.

### **Claim Rejections - 35 USC § 103**

**18.** The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**19.** Claims 7, 10 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rausing et al. (US 3,086,336) or Fuss et al. (US 5,899,049)

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The Rausing et al. reference or Fuss et al. reference does not disclose that the air inlet pipe 106, 24, respectively, is formed in two parts which are snap-fit together, but such is old and well known in the relevant art as a means to form and connect elements of a machine such as when parts are molded and snap fit together at a later point. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified either one of the Rausing et al. or Fuss et al. devices to have the air-inlet pipe be formed in two parts which are snap-fit together, in order to make the pipe easy to manufacture and assembly. Furthermore, it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. Nerwin v. Erlichman, 168 USPQ 177, 179.

The Rausing et al. reference or Fuss et al. reference does not disclose that the type of material from which the air inlet pipe 106, 24, respectively, is formed is thermoplastic material (as set forth in claim 10), but forming device structures from thermoplastic material is notoriously old and well known in the relevant art for their ease of manufacture. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified either one of the Rausing et al. or Fuss et al. apparatus to have formed the air inlet pipe 106 from thermoplastic material in order to benefit from the ease in which such material may be manufactured into machine parts.

The Rausing et al. reference or Fuss et al. reference does not disclose the sensor device (as set forth in claim 22), but providing a sensor device (of either type set forth in claim 22) is notoriously old and well known in the relevant art to inform an

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operator of web material passage or proximity. It would have been obvious to one having ordinary skill in the art, at the time applicant's invention was made, to have modified either one of the Rausing et al. or Fuss et al. apparatus to have included a sensor device (of either type set forth in claim 22) in order to detect the presence or passage of the web material.

### **Conclusion**

**20.** The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references listed on the attached form (PTO-892) are cited to show various machines and methods for feeding films and webs, and to show machines and methods for filling bag material. All are cited as being of interest and to show the state of the prior art.

**21.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen F. Gerrity whose telephone number is 571-272-4460. The examiner can normally be reached on Monday - Friday from 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Stephen F. Gerrity/  
Primary Examiner, Art Unit 3721

12 November 2008